

Debt Management Policy

September 2020



Debt Management Policy and Procedures

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West Lindsey District Council has a legal duty to ensure the prompt and cost effective billing, collection and recovery of all sums due to the Council.

Efficient debt management is essential to the council to provide the financial resources required to provide services for the benefit of local residents and businesses. This policy aims to ensure that a fair and consistent approach is taken when collecting any sums that are not paid when due and it will ensure that before any recovery action is taken against an individual, that their particular circumstances are considered at each stage in the process.

The aim is to ensure that council payment defaulters have their debts collected with the least possible charges being incurred by them.

This policy covers all debt recovery activities in relation to:

- Council Tax
- Business Rates
- Sundry Debtors
- Overpaid Housing Benefit

Section 2 Legislation

The relevant legislation includes:

Council Tax	Local Government Finance Act 1992 Local Government Finance Act 2012 The Council Tax (Administration and Enforcement) Regulations 1992 (as amended) West Lindsey District Council – Council Tax Support Scheme
Business Rates	Local Government Finance Act 1988 Local Government Finance Act 2012 The Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended)
Sundry Debtors	The Late Payment of Commercial Debts Regulations 2002 The Late Payment of Commercial Debts Regulations 2013 The Late Payment of Commercial Debts (Interest) Act 1998
Housing Benefit Overpayments	Housing Benefit Regulations 2006 Housing Benefit (Pension Credit) Regulations Council Tax Benefit Regulations 2006 (Up to 31.3.13)

Section 3 Council Tax

- 3.1 Council Tax is the system of local taxation used in England to part fund the services provided by local government. It was introduced in 1993 by the Local Government Finance Act 1992 and is a tax on people's homes.
- 3.2 West Lindsey District Council is responsible for collecting the council tax on behalf of the Lincolnshire County Council, the Police and Crime Commissioner for Lincolnshire and Parish and Town Councils in the district.
- 3.3 Owner occupiers and their partners usually have to pay the council tax and where properties are rented, the tenants and their partners have to pay. In the cases of empty properties, it is usually the owner who has to pay.
- 3.4 Demand notices are issued by 17th March in each financial year, detailing the amount, date and frequency of the payment to allow for the first instalment to be paid on 1st April and to ensure that the statutory 10 working days notice is given to direct debit payers.
- 3.5 Instalment payments are due on 1st of each month for everyone other than direct debit payers. Direct debit payers are offered four instalment dates of 1st, 15th, 21st and 28th of each month.
- 3.9 Reminder notices can, in accordance with Council Tax legislation, be issued within seven days of an instalment not being paid. However, reminders are normally issued at the beginning of the month following the date the instalment became due.

If the instalment is paid within seven days of the issue of the reminder, the right to pay by instalments may continue.

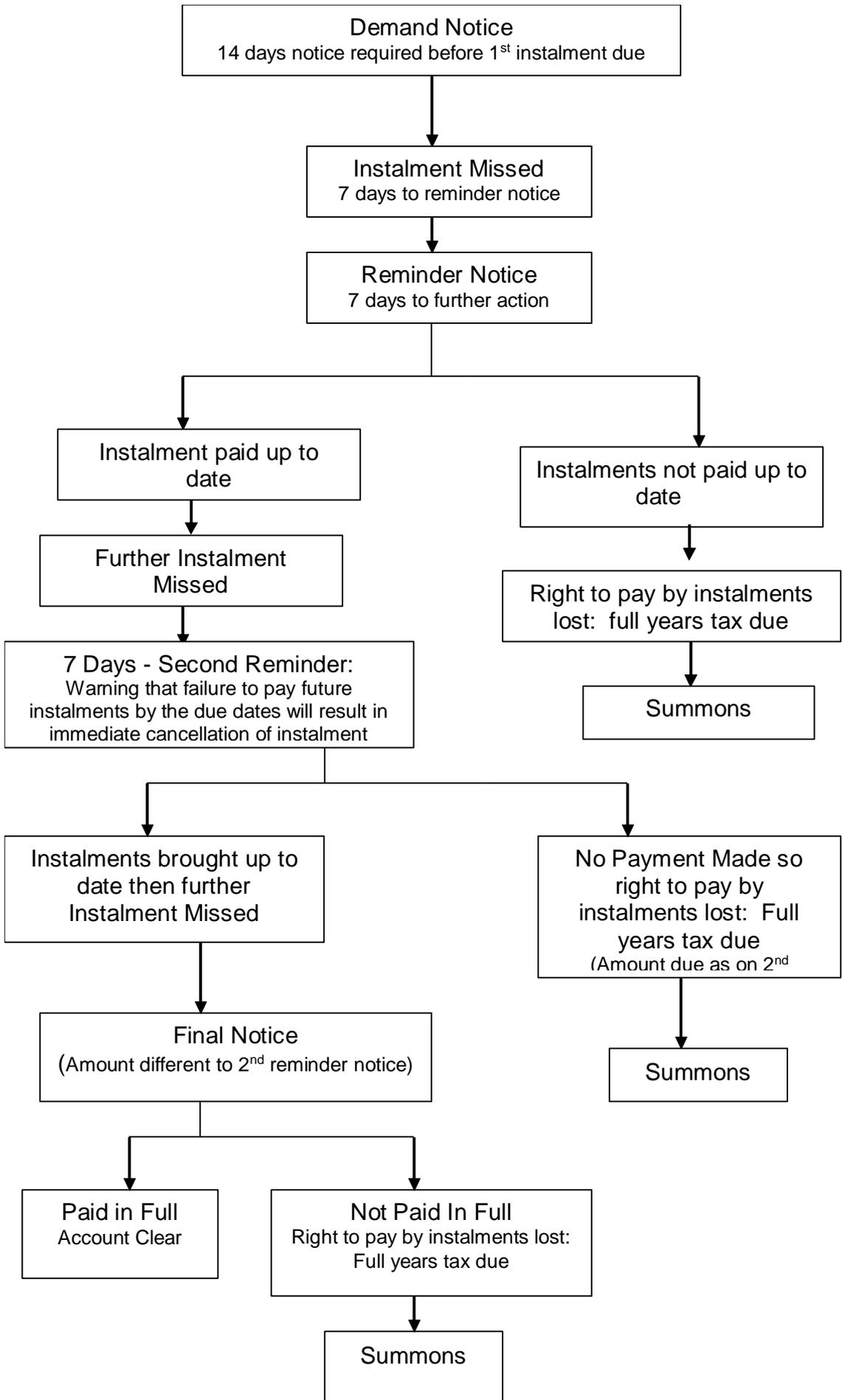
If during the same year a second instalment is missed, the above process is repeated.

If the outstanding amount on a first or second reminder remains unpaid, the right to pay by instalments is lost and the whole remaining balance for the year becomes due within a further 7 days.

Final Notices are required for any accounts that do not qualify for instalments and the balance is not paid within 14 days of the notice or where the amount due has changed between the outstanding reminder or second reminder and after the issue of the relevant adjustment notice

- 3.10 Summonses are issued in accordance with the recovery timetable following consultation with the Lincoln Magistrates Court along with a letter explaining the process. Payment arrangements can be agreed at any time and council tax payers are encouraged to contact the council tax team to discuss the matter.

- 3.11 **Flow Chart Detailing Above Action**



3.12 The Court hearing dates are agreed annually in advance with the Lincoln Magistrates court.

A minimum of 14 days is allowed between the service of the summons to the defaulter and the hearing date.

At the hearing, an authorised officer of the council will make an application to the Court for the liability orders listed. The Magistrates will hear the defence of any persons wishing to prevent the issue of the liability order.

3.13 Notices requiring certain information from the debtor are issued within seven days of the hearing to all cases where no arrangements to clear the debt have been made or where no income details are known regarding the debtor. This notice helps to determine the next course of action to be taken to recover the sum due. The notice also warns the debtor that unless they arrange to pay the debt it will be released to the Enforcement Agents within 14 days of its date of issue and that further costs will be incurred. A copy of the schedule of Enforcement Agents charges is also included with these letters and a budget form, to enable the debtor to make an offer of payment based on their income and expenditure.

Failure to supply or supplying false information can lead to the imposition of a fine by the Magistrates Court.

3.14 **Attachment of Earnings Order**

Where a debtor is employed, an Attachment of Earnings Order will be issued. The order once served will remain in force until the balance is clear or the authority withdraws it.

The amount is deducted in accordance with the tables contained in the regulations which provides percentages to be applied to "net earnings" after income tax, NI, superannuation, deductions for advances of salary and any other council tax attachment or earnings deductions.

Attachable pay includes wages/salary, overtime, holiday pay, other fees, bonus, commission or SSP

A local authority may serve attachment of earnings orders on itself as an employer of a debtor

3.15 **Deduction from Department for Works and Pensions Benefits**

Where a debtor is in receipt of income support, job seekers allowance, pension credit or Employment Support Allowance, an attachment of benefit may be issued to the Department for Works and Pensions to make direct payments to the Council to pay the council tax.

3.16 **Attachment to Members Allowances**

Where the debtor is a Member of West Lindsey DC, attempts will be made to secure payment of the council tax by attachment to his/her Members Allowance. This is undertaken following consultation with the Director of Corporate Services.

3.17 **Enforcement Agents**

Where no information is received from the debtor or where the other recovery options outlined above have failed, then the liability order will be passed to Enforcement Agents for action.

The Enforcement Agent will send a statutory Notice of Enforcement where a fee is charged and if this is ignored a visit will be made incurring another fee.

If payment is not made in full, including all costs a payment arrangement may be agreed and in order to provide security for the debt the Enforcement Agent will complete an inventory of goods that can be sold to repay the debt in the event of non-payment. This is called a 'controlled goods agreement'.

If the Enforcement Agent is unsuccessful in either collecting the debt or identifying sufficient goods to clear the debt they will return the debt confirming this and further recovery action will be considered.

3.18 **Bankruptcy**

Bankruptcy is a procedure available to the council in the enforcement of unpaid Council Tax and Business Rates and will be considered where it is deemed to be more appropriate than other methods of enforcement. It will only be considered where there is equity in the property and where the combined debts of the taxpayer are over £5,000.

Once a debt is passed to the Council's bankruptcy practitioners a statutory demand will be served on the debtor under Section 268 (1) (A) of the Insolvency Act 1986.

If no contact is received from the debtor in response to this, a bankruptcy petition will be issued.

3.19 **Charging Order**

Where the council holds information to suggest that payment of the debt is unlikely to be achieved through bankruptcy, or where the current address of the debtor is either unknown or overseas, preventing service of a statutory demand, a Charging Order may be more appropriate.

Where solicitors are instructed to apply for a Charging Order they will be given full authority to deal with the case. In the event that a forced sale is contemplated further instructions must be sought from the authority on whether the forced sale will be approved.

Where a forced sale is not considered appropriate, the Charging Order will remain on the property until it is sold. The department may still seek recovery by other methods for any debt(s) not covered by the Charging Order.

3.20 **Arrangements for Payment**

Payment arrangements can be made at any time of the proceedings.

The aim of the arrangement is to ensure the debt is paid within the current financial year and payment by direct debit is the preferred payment option. Payment arrangements can be made by weekly, fortnightly or monthly payments.

In cases of severe hardship payment may be extended into the new financial year.

Payment arrangements are monitored regularly and where payments are not made as agreed further recovery action will be taken e.g attachment of earnings order etc

3.21 **Commencement of Committal Proceedings**

The Council can apply to the Magistrates Court for committal to prison for a maximum of 90 days. This action is likely to take place when:

- Taking Control of Goods by the Enforcement agent on goods has been attempted and failed
- There is no property or assets
- There are previously broken agreed payment arrangements
- There is failure to provide employment or benefit details

3.22 The committal hearing is an enquiry by the Magistrates into a debtor's means and conduct with a view to whether the failure to pay was due to 'wilful refusal' or 'culpable neglect'. Such an enquiry can only be conducted in the presence of the defaulter and if they fail to appear a warrant for their arrest will be applied for. This would normally be a warrant with bail to appear at the next available pre-scheduled hearing date for non-payment of council tax. This avoids the debtor being held for any length of time.

3.23 If the Magistrates are satisfied that the council has complied with legislation they will consider the issue of whether payment has not been made through 'wilful refusal' or 'culpable neglect'. If they find either present the following options available to them are:

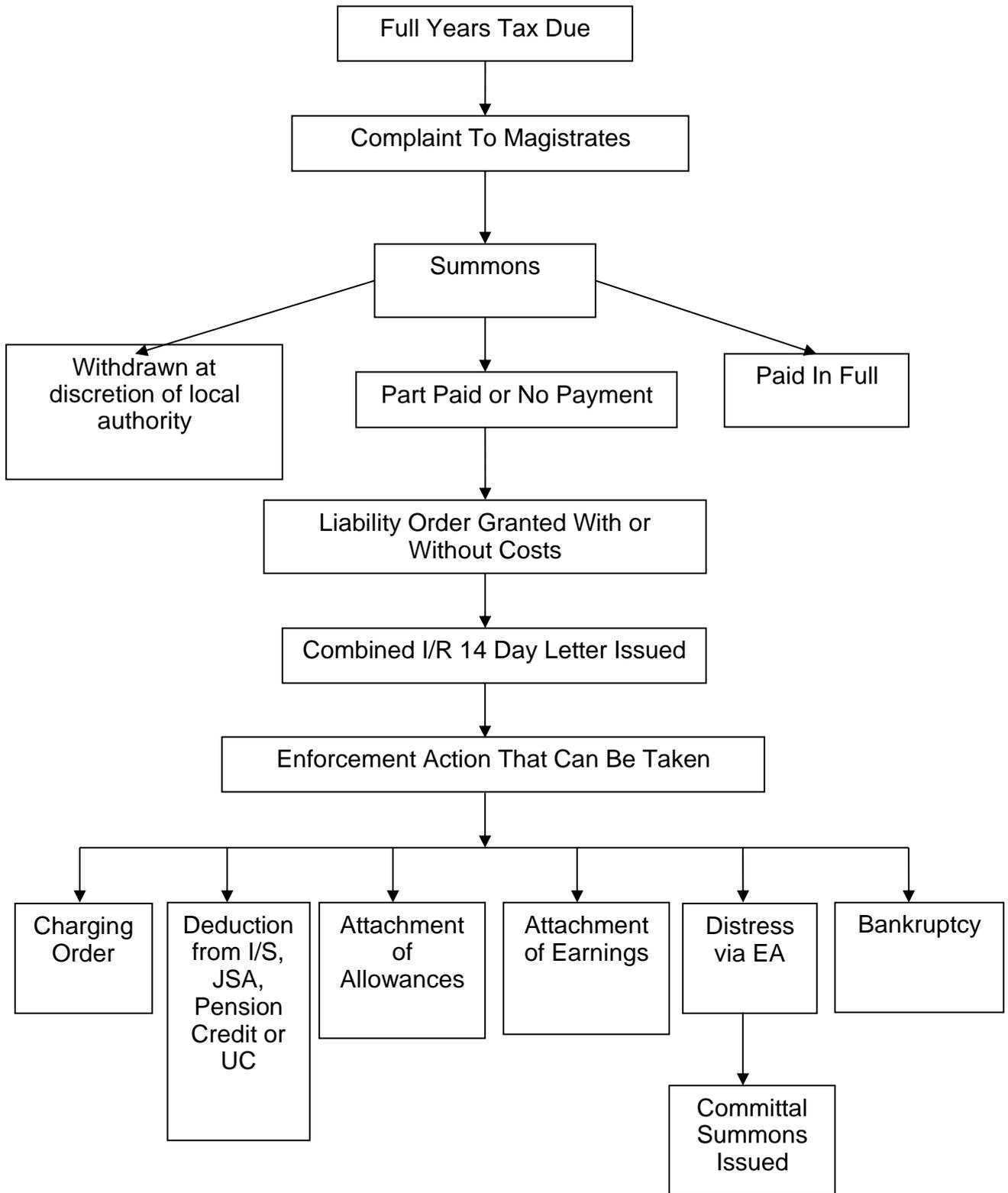
- Issue a warrant of commitment for a period not exceeding 3 months
- Fix a term of imprisonment postponed under payment terms
- Refuse to issue a warrant or fix a term of imprisonment

Any payments made under an order must be made direct to the council who will monitor them and report back to court if they fail to be paid as ordered.

The Magistrates can also remit all or part of the debt once they have heard the evidence relating to the means of the debtor.

3.24 Where the court order is not maintained the council will bring the debtor back before the Magistrates to seek immediate committal to prison.

3.25 **Flow Chart Detailing Above Action**



West Lindsey District Council currently uses the services of external Enforcement Agents firms who are instructed to act against debtors who have not made a satisfactory arrangement for payment or who have not provided financial details to enable an attachment of earnings or benefit to be implemented.

The Enforcement Agents employed by West Lindsey District Council must be members of CIVEA, the Civil Enforcement Agency. This is an independently funded association formed to represent all private, certificated Enforcement Agents in England and Wales.

Only one Enforcement Agents will be appointed to deal with the account of a particular debtor and if the debtor has more than one liability order issued against them these will be issued to the same Enforcement Agents.

The performance of all Enforcement Agents firms are reviewed at quarterly meetings in which their collection levels are compared to their competitors and any queries, complaints or issues are raised. A record of any decisions made is kept.

3.27 Tracing

Where correspondence is returned by the Post Office stating 'gone away' or we become aware that a person has absconded, we will attempt to trace the person in-house by interrogating the internal systems. If these enquiries fail further enquiries can be made using an external tracing agency. Access to this database is controlled and monitored to prevent abuse.

3.28 Write Off Procedures

Every effort is made to ensure that all amounts due to the council are rigorously pursued however where a debt becomes irrecoverable eg: absconded with no forwarding address able to be located, deceased with insufficient funds in the estate, bankrupt with no prospect of a dividend it will be submitted for write off.

All write offs are authorised in accordance with the Financial Procedural Rules.

Section 4 Business Rates

- 4.1 Business Rates is a property tax charged on most non-domestic premises including commercial properties such as shops, offices, pubs, warehouses and factories.
- 4.2 The business rates monies raised is used to help fund local services like the Police and Fire and Rescue services.
- 4.3 Demand notices are issued during March in each financial year, detailing the amount, date and frequency of the payment to allow for the first instalment to be paid on 1st April and to ensure that the statutory 10 working days notice is given to direct debit payers.
- 4.4 Instalment payments are due on 1st of each month for everyone other than direct debit payers.
Direct debit payers are offered 4 instalment dates of 1st, 15th, 21st and 28th of each month.
- 4.5 If the instalments are not paid as demanded reminder notices will be issued.

If the instalment is paid within seven days of the issue of the reminder the right to pay by instalments may continue.

If during the same year a second instalment is missed the above process is repeated.

If the outstanding amount on a first or second reminder remains unpaid the right to pay by instalments is lost and the whole remaining balance for the year becomes due within a further seven days.

If a third reminder is issued during the year, the ratepayer loses the right to pay by instalments and the full amount becomes due and must be paid to prevent escalation to a court hearing.

Final Notices are required for any accounts that do not qualify for instalments and the balance is not paid within 14 days of the notice or where the amount due has changed between the outstanding reminder or second reminder and after the issue of the relevant adjustment notice
- 4.6 Summonses are issued in accordance with the recovery timetable following consultation with the Lincoln Magistrates Court along with a letter explaining the process. Payment arrangements can be agreed at any time and business rate payers are encouraged to contact the business rate team to discuss the matter.
- 4.7 The hearing dates are held monthly, the dates having been agreed annually in advance with the Lincoln Magistrates court.

A minimum of 14 days is allowed between the service of the summons to the defaulter and the hearing date.

At the hearing an authorised officer of the council will make an application to the Court for the liability orders listed. The Magistrates will hear the defence of any persons wishing to prevent the issue of the liability order.
- 4.8 **Enforcement Agents**

Where a debt remains unpaid the liability order will be passed to Enforcement Agents for action.

The Enforcement Agent will send a statutory Notice of Enforcement where a fee is charged and if this is ignored a visit will be made incurring another fee.

If payment is not made in full, including all costs a payment arrangement may be agreed and in order to provide security for the debt the Enforcement Agent will complete an inventory of goods that can be sold to repay the debt in the event of non-payment. This is called a 'controlled goods agreement'.

If the Enforcement Agent is unsuccessful in either collecting the debt or identifying sufficient goods to clear the debt they will return the debt confirming this and further recovery action will be considered.

4.9 **Insolvency**

Insolvency is a procedure available to the council in the enforcement of unpaid Business Rates and will be considered where it is deemed to be more appropriate than other methods of enforcement. It will only be considered where the combined debts of the rate payer are over £5,000.

Once a debt is passed to the Council's bankruptcy practitioners a statutory demand will be served on the debtor under Section 268 (1) (A) of the Insolvency Act 1986.

If no contact is received from the debtor in response to this a bankruptcy petition will be issued.

4.10 **Arrangements for Payment**

Payment arrangements can be made at any time of the proceedings.

The aim of the arrangement is to ensure the debt is paid within the current financial year and payment by direct debit is the preferred payment option. Payment arrangements can be made by weekly, fortnightly or monthly payments.

In cases of severe hardship, payment may be extended into the new financial year.

Payment arrangements are monitored regularly and where payments are not made as agreed, further recovery action will be taken.

4.11 **Commencement of Committal Proceedings**

Although the Council can apply to the Magistrates Court for committal to prison for a maximum of 90 days it is very difficult as Limited companies and a director cannot be held personally liable for the debts of his limited company. However, it is possible to take this action when:

- Taking Control of Goods by the Enforcement agent on goods has been attempted and failed
- There is no property or assets
- There are previously broken agreed payment arrangements

- There is failure to provide employment or benefit details

4.12 The committal hearing is an enquiry by the Magistrates into a debtor's means and conduct with a view to whether the failure to pay was due to 'wilful refusal' or 'culpable neglect'. Such an enquiry can only be conducted in the presence of the defaulter and if they fail to appear a warrant for their arrest will be applied for. This would normally be a warrant with bail to appear at the next available pre-scheduled hearing date for non-payment of business rates. This avoids the debtor being held for any length of time.

4.13 If the Magistrates are satisfied that the council has complied with legislation they will consider the issue of whether payment has not been made through 'wilful refusal' or 'culpable neglect'. If they find either present the following options available to them are:

- Issue a warrant of commitment for a period not exceeding 3 months
- Fix a term of imprisonment postponed under payment terms
- Refuse to issue a warrant or fix a term of imprisonment

Any payments made under an order must be made direct to the council who will monitor them and report back to court if they fail to be paid as ordered.

The Magistrates can also remit all or part of the debt once they have heard the evidence relating to the means of the debtor.

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The Enforcement Agents employed by West Lindsey District Council must be members of CIVEA, the Civil Enforcement Agency. This is an independently funded association formed to represent all private, certificated Enforcement Agents in England and Wales.

Only one Enforcement Agents will be appointed to deal with the account of a particular debtor and if the debtor has more than one liability order issued against them these will be issued to the same Enforcement Agents.

The performance of all Enforcement Agents firms are reviewed at quarterly meetings in which their collection levels are compared to their competitors and any queries, complaints or issues are raised. A record of any decisions made is kept.

4.16 **Tracing**

Where correspondence is returned by the Post Office stating 'gone away' or we become aware that a business has closed we will attempt to trace the ratepayer in-house by interrogating the internal systems. If these enquiries fail further

enquiries can be made using an external tracing agency. Access to this database is controlled and monitored to prevent abuse.

4.17 **Write Off Procedures**

Every effort is made to ensure that all amounts due to the council are rigorously pursued however where a debt becomes irrecoverable eg: absconded with no forwarding address able to be located, deceased with insufficient funds in the estate, bankrupt with no prospect of a dividend it will be submitted for write off.

All write offs are authorised in accordance with the Financial Procedural Rules.

Section 5 Sundry Debtors

5.1 The Revenues Section is responsible on behalf of the Council for the collection of Sundry Debts and has a legal duty to seek to recover all outstanding debts.

5.2 All sundry debt accounts raised are done so promptly and invoices are only raised in circumstances where payment in advance is impractical.

5.3 All Sundry Debtor accounts are raised promptly and issued on a daily basis being either posted or emailed to customers.

Periodic invoices are also raised which are issued on a designated time scale ie: monthly, annually

5.4 The council offers a number of payment methods detailed below:

- By Direct Debit – 1st of month
- By credit or debit card over the telephone – this is an automated system
- By website payments on the council's website
- By standing order
- By cheque

5.5 **Recovery Procedure**

- In the event of a sundry debtor invoice not being paid a reminder notice will be issued after 28 days.
- If the account fails to be paid after a further 14 days a final notice is issued.
- If the debt continues to remain unpaid, an Aged Debt report listing any outstanding balances will be issued to each individual department to ascertain the next course of action. These are issued on the 1st of each month via email.
- Each department will be contacted to discuss their particular debts and whether they intend to contact the debtor themselves or require a letter to be issued to them explaining the next course of action.
- Continuing failure to either pay or make a payment arrangement at this stage can result, by request of the issuing department, in the debt being referred to a debt collection agency.
- If the debt is unable to be collected by the agency, an application is made to the County Court. At this stage consideration can be given to utilising charging orders, making an attachment of earnings order, instructing the county court bailiff or applying for insolvency.
- In the event of further court action being taken all court costs incurred will be paid by the debtor.

5.6 At all times from the issue of an invoice, officers are prepared to discuss payment arrangements with customers.

5.7 **Bankruptcy**

The council can also apply to have a debtor made bankrupt, but as it is very serious because the debtor could lose their home and assets it would only be used as a last resort.

5.8 **Write Off Procedures**

Every effort is made to ensure that all amounts due to the council are rigorously pursued however where a debt becomes irrecoverable eg: absconded with no forwarding address able to be located, deceased with insufficient funds in the estate, bankrupt with no prospect of a dividend it will be submitted for Write Off.

In all cases where a Write Off is being considered, the Revenues team will contact the issuing department to ascertain whether they have any further details to assist in the collection of the debt. This may be a new address, telephone details or employment details which could be used to renew recovery action.

In all cases the issuing department will be required to agree the write off, providing evidence as to why the debt needs to be written off.

All Write Offs are authorised in accordance with the Financial Procedural Rules.

5.9 **Invoice Cancellation**

Where a service has not been provided, or an invoice incorrectly issued this can be cancelled with the relevant authorisation from the department

Section 6 Housing Benefit Overpayment

- 6.1 The Housing Benefit Regulations 2006 outlines the Council's right to recover, discretion to recover, whom to seek recovery from and methods of recovery.
- 6.2 When calculating overpayments of Housing Benefit, the Council specifically undertakes to ensure that no person is required to repay unrecoverable

overpayments. An unrecoverable overpayment (as defined in Housing Benefit Regulations 2006) is one that:

- Has been caused by an official error **and**
- That the claimant or recipient of the benefit did not contribute to it **and**
- That the claimant or recipient of the benefit could not reasonably have been expected to know that an overpayment was occurring at the time that the payment was made or at the time of notification.

6.3 The Council will seek to recover overpaid Housing Benefit in the most efficient and cost effective manner, having regard to its statutory obligation to protect public funds.

The Council will, however, have regard to the circumstances of the individual from whom recovery is sought.

6.4 The minimum rate of recovery is set in accordance with the lower level rate of recovery, as determined by the Department for Works and Pensions.

6.5 **Methods of Recovery**

6.5.1 **On-going Entitlement - Instalment Recovery**

Where a debtor has continuing entitlement to Housing Benefit a portion of the weekly entitlement is withheld and offset from the outstanding debt until it has been fully recovered.

The debtor will be notified of the commencement of instalment recovery and if they are experiencing financial hardship consideration will be given to reducing the payment arrangement.

6.5.2 **Offset of Entitlement**

The Council may offset some or all of any amount of benefit owed to the claimant to recover an overpayment in part or full. This may occur where an amount of benefit is owed due to the effect of a 'backdated' advantageous change of circumstance.

6.5.3 **Voluntary Payment Arrangement**

The Council may enter into a monthly / weekly payment arrangement with a debtor who is no longer entitled to any Housing Benefit. Payments can be made by a variety of methods.

6.5.4 **Social Security Benefits**

If recovery from on-going entitlement to Housing Benefit is not available the Council may seek to recover overpaid benefit from another Social Security benefit in payment to the claimant.

6.5.5 **Housing Benefit paid by another Council**

This may be appropriate where the debtor has left the Council's area and it can be established that they are in receipt of Housing Benefit in another council's area. The debt may be recovered by way of the new Council who will make deductions from ongoing entitlement on behalf of the creditor Council.

6.5.6 Collection Agents

Collection Agents can be instructed to secure payment or a payment arrangement.

6.5.7 Deductions from Earnings – Direct Earnings Attachment

An application can be made to apply a deduction of earnings without the need to attend court.

6.5.8 Registration of Debts at County Court

As a final resort recovery can be enforced by registering the debt at a County Court. This has the effect of enabling the Council to use recovery methods via a County Court Judgement (CCJ).

6.5.9 Adjustment of Council Tax Support

Where council tax reduction (support) is paid to a claimant by way of a credit to their council tax account and an adjustment is required which reduces the amount of council tax support, the amount will be debited from the council tax account. The outstanding balance will be recovered in the same manner as other sums of council tax.

Section 7 Complaints Procedure

The Council operates a one stage complaints process which will be responded to within 21 days. When a complaint is received the Customer Experience Officer may need to make further contact to discuss concerns and at this stage any further information may be provided or requested.

If a customer remains dissatisfied with the way we have dealt with their complaint they have the right to ask the Local Government Ombudsman (LGO) to investigate the complaint.

The Local Government Ombudsman Contact Details are:

The Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH

Telephone: 0300 061 0614
Web: www.lgo.org.uk

If you would like a copy of this in large, clear print, audio, Braille or in another language, please telephone **01427 676676**